

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE WOLFINGTON GROUP,

Plaintiff,

v.

BERTERA CHEVROLET, PONTIAC, BUICK,
INC.,

Defendant.

COMPLAINT AND DEMAND
FOR JURY TRIAL

(INJUNCTIVE RELIEF SOUGHT)

Civil Action Docket No.

05 - 30202 - MAP

FILING FEE PAID:

RECEIPT # 306042

AMOUNT \$ 250.00

BY DPTY CLK MGL

DATE 9/13/05

Plaintiff The Wolfington Group ("Wolfington") hereby complains against Defendant

Bertera Chevrolet, Pontiac, Buick, Inc. ("Bertera") as follows:

PARTIES

1. Wolfington is a business corporation duly organized and existing under the laws of the State of Maine, with its principal place of business in Augusta, Kennebec County, Maine.

2. Bertera is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, with its principal place of business in Palmer, Hampden County, Massachusetts. Bertera is involved in the business of motor vehicle sales to the public.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), because it is brought pursuant to the Federal Copyright Act. This Court further has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, because there is complete diversity between plaintiff and defendant and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. This Court has personal jurisdiction over Bertera by virtue of its residing and doing business in Massachusetts.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c), and 28 U.S.C. § 1400(a), because the events giving rise to the claim occurred in this district and Bertera is subject to personal jurisdiction in this district.

FACTUAL BACKGROUND

6. Continuously since the late 1990s, Wolfington has been engaged in the business of assisting retail car dealers with the sales of their inventory to consumers.

7. Wolfington contracts with car dealers to conduct special sales promotions and, in fact, has built a business, successfully generating great respect, as well as revenues, both for itself and for the local car dealerships with which it contracts.

8. Bertera sells cars and trucks at retail to customers. Bertera is one of several related dealerships in Western Massachusetts, which together operate as the “Bertera Group.”

9. For several years beginning in 1999, Wolfington contracted with Bertera to run sales events at various car dealerships owned by Bertera or by related entities. In connection with those sales promotions, Wolfington used its unique mailing piece (the “Wolfington Mailing Piece”) to promote those sales events. A true copy of the Wolfington Mailing Piece is attached hereto as Exhibit A.

10. On October 29, 2001, Wolfington entered into a contract with Bertera pursuant to which it agreed, for a fee, to conduct a series of promotional events in 2002 at Bertera’s dealership in Palmer (the “2002 Contract”). A true copy of the 2002 Contract is attached hereto as Exhibit B.

11. In the 2002 Contract, Bertera agreed, *inter alia*, “to indemnify and hold the Wolfington Group harmless for actions arising from the sale of vehicles in association with this dealership.”

12. In September 2003, Wendy Green Wolf, a customer who purchased a vehicle from Bertera during a promotional event conducted by Wolfington pursuant to the 2002 Contract, filed suit against Wolfington, Bertera, and others in Hampshire County Superior Court in a case captioned, Wendy Green Wolf v. Bertera Chevrolet, Oldsmobile, Pontiac, Buick, Inc., et al., Docket No. CV-03-187 (the “Wolf Lawsuit”).

13. In the Wolf Lawsuit, Ms. Wolf seeks an award of damages from Wolfington and Bertera under claims of common law fraud, false imprisonment, and violation of M.G.L. ch. 93A, arising out the alleged conduct of employees of Wolfington and Bertera at the time she purchased her car on March 14, 2002.

14. To date, Wolfington has expended considerable sums in the defense of the Wolf Lawsuit, and it remains potentially liable to Ms. Wolf for money damages.

15. On several occasions, Wolfington, through counsel, has sought indemnification from Bertera for the funds expended on defense of the Wolf Lawsuit and for any damages to which it may be found liable. Through counsel, Bertera has verbally indicated that Bertera is unwilling to provide indemnification as requested.

16. On September 29, 2003, Wolfington entered into a contract with Bertera pursuant to which it agreed, for a fee, to conduct a series of promotional events in 2004 at Bertera’s dealership in Palmer (the “2004 Contract”). A true copy of the 2004 Contract is attached hereto as Exhibit C.

17. As part of the 2004 Contract, Bertera expressly agreed that “The Wolfington Group system and mail piece is copyrighted and proprietary. This agreement provides a license for one time use of these materials and system per event. Any additional use of these products is an infringement under applicable copyright laws.”

18. Soon thereafter, in November 2003, Metro Jeep Chrysler, a member of the Bertera Group of dealerships located in Springfield, Massachusetts, distributed or caused to be distributed a promotional mailing piece (the “Metro Piece”) similar to the Wolfington Mailing Piece without Wolfington’s authorization. Wolfington immediately brought this matter to the Bertera Group’s attention, stating that the Metro Piece infringed Wolfington’s copyright for the Wolfington Mailing Piece and demanding that the Bertera Group cease and desist from further use of the Metro Piece.

19. By letter of its counsel dated December 29, 2003, the Bertera Group stated that (a) it had ceased all use of the Metro Piece; (b) it was not aware that its use of the Metro Piece constituted copyright infringement; and (c) agreed to “refrain from using the [Metro Piece] in all future mailings.” A true copy of counsel’s letter is attached hereto as Exhibit D.

20. Since the completion of the promotional events contemplated in the 2004 Contract, Bertera has declined to do further business with Wolfington.

21. In August 2005, Bertera conducted its own inventory clearance event similar to those it had conducted with Wolfington’s assistance in the past. In connection with that event, Bertera used a promotional mailing piece which is virtually identical in content, form and approach to Wolfington’s copyrighted and proprietary piece mailing. A true copy of an example of Bertera’s unauthorized mailing piece is attached hereto as Exhibit E.

22. Bertera held its recent inventory clearance event on the same dates that Wolfington was conducting a similar event for a dealership located in Southwick, Massachusetts.

23. Bertera has adopted for its own use, and without authorization, sales promotional materials identical to Wolfington's copyrighted works.

COUNT I
(Copyright Infringement)

24. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 23 above as though set forth in full herein.

25. Wolfington owns the copyright to the Wolfington Mailing Piece, and has registered with U.S. Copyright Office its copyright in that work. A true copy of the Certificate of Registration for the Wolfington Mailing Piece is attached hereto as Exhibit F.

26. In August 2005, Bertera caused to be sent to thousands of addresses in Western Massachusetts a sales promotions piece advertising a vehicle sales promotion at the Bertera's automobile dealership in Palmer, Massachusetts. Bertera's marketing piece copies the text, style, and design of Wolfington's copyrighted work.

27. Wolfington did not authorize Bertera's use of its copyrighted work.

28. Bertera's infringement of Wolfington's copyrighted work is both intentional and willful.

29. Bertera's actions described above violate the exclusive rights protected by 17 U.S.C. § 106, and so violate 17 U.S.C. § 501(a), because such conduct constitutes willful and unauthorized reproduction, distribution, and public display of Wolfington's copyrighted sales materials, for Bertera's commercial gain.

30. Wolfington has been, and will continue to be, damaged by Bertera's violations of the Copyright Act.

31. Bertera is likely to engage in similar conduct, in violation of Wolfington's registered copyright, creating continuous injury and irreparable harm to Wolfington.

32. As a result of Bertera's violations of the Copyright Act, Wolfington is entitled to statutory damages in the amount of \$150,000 for each work infringed or such sum as the Court, in its discretion, may consider just under 17 U.S.C. § 504(c)(2).

COUNT II
(Violation Of Massachusetts Consumer Protection Act, M.G.L. ch. 93A)

33. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 32 above as though set forth in full herein.

34. At all times material to this action, both Bertera and Wolfington were engaged in trade or commerce within the meaning of M.G.L. ch. 93A, § 1(b).

35. M.G.L. ch. 93A, § 2(a), prohibits the use of unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or business.

36. Bertera's adoption of Wolfington's proprietary sales system constitutes an unfair or deceptive act or practice prohibited by M.G.L. ch. 93A, § 2(a).

37. The actions constituting Bertera's unfair or deceptive acts or practices occurred primarily and substantially within the Commonwealth of Massachusetts and constitute willful and knowing violations of the Massachusetts Consumer Protection Act.

38. Wolfington has suffered a loss of money or property as a result of Bertera's unfair or deceptive acts in the conduct of its trade or business.

COUNT III
(Breach Of Contract)

39. Plaintiff repeats and realleges the allegations contained in Paragraphs 1 through 38 above as though fully set forth herein.

40. Bertera has breached its contractual undertaking to indemnify Wolfington in connection with the Wolf Lawsuit.

41. Wolfington has suffered actual damages as a result of Bertera's breach of contract.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that the Court grant it the following relief:

A. Declare that Defendant's actions constitute infringement of Plaintiff's exclusive rights under Section 106 of the Copyright Act;

B. Grant preliminary and permanent injunctive relief in accordance with 17 U.S.C. § 502(a) against Defendant and its officers, agents, servants, employees, and attorneys, and all persons in active concert or participation with them, prohibiting them from infringing Plaintiff's copyrights;

C. Require Defendant to pay Plaintiff the sum of \$150,000 in statutory damages for each act of infringement through the date of judgment herein or such sum as the Court, in its discretion, may consider just under 17 U.S.C. § 504(c)(2);

D. Require Defendants to pay to Plaintiff all of its costs and reasonable attorney fees in accordance with 17 U.S.C. § 505;

E. Award the Plaintiff its actual damages for the Defendant's violation of the Massachusetts Consumer Protection Act, pursuant to M.G.L.A. ch. 93A, § 11;

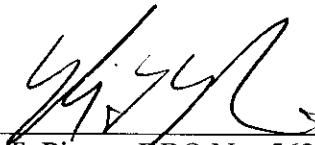
- F. Award the Plaintiff double or treble damages for the Defendant's willful and knowing violations of the Massachusetts Consumer Protection Act, pursuant to M.G.L.A. ch. 93A, § 11;
- G. Award the Plaintiff damages for Defendant's breach of contract.
- H. Award the Plaintiff its reasonable attorneys' fees pursuant to M.G.L.A. ch. 93A, § 11;
- I. Award the Plaintiff its costs and prejudgment interest; and
- J. Award the Plaintiff such other relief as this Court deems just and proper.

DEMAND FOR A TRIAL BY JURY

Pursuant to Fed.R.Civ.P. 38(b) and Local Rule 38, Plaintiff demands a trial by jury of all issues so triable in this action.

Dated: September 12, 2005

Respectfully submitted,



Roy T. Pierce, BBO No. 562811
Preti, Flaherty, Beliveau, Pachios & Haley, LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
(207) 791-3000
(207) 791-3111 [fax]
rpierce@preti.com

*Counsel for Plaintiff
The Wolfington Group*

RECORDS SECTION DISBURSEMENTS DIVISION
116B RIVERSIDE INDUSTRIAL PARKWAY
PORTLAND ME 04103

INVENTORY CLEARANCE EVENT

• BY INVITATION ONLY •

Dear Debra Leclair,

The Wolfington Group, Inc. has been retained to sell millions of dollars worth of new and used cars, trucks, minivans and sport utility vehicles from Toyota, General Motors, Ford Motor Company, DaimlerChrysler Corporation, and other select import manufacturers. Sponsored auction vehicles, dealer demos, rental and lease returns, factory program vehicles, local trade-ins and dealership pre-owned vehicles will also be available.

The chosen site for this event is:

LEE TOYOTA

107 Main Street
Topsham, ME 04086

2 DAYS ONLY!!

FRIDAY SATURDAY

4TH

MARCH

9 am to 9 pm

5TH

MARCH

9 am to 7 pm

To ensure the sale of these vehicles, additional inventory, combined with 1.9% APR Financing (on select models) will save you thousands of dollars. Pricing will start as low as \$8,995. No dealers or brokers until Monday, March 7th, 2005.

THIS WILL BE YOUR ONLY NOTICE!

All credit applications will be reviewed. Upon approval, financing and lease specialists will arrange a payment to fit your budget. Bank representatives will also be available!


BONUS: The attached check will be the exact amount you will receive on your selected vehicle! Note: Checks will range from \$400 to \$2,500. For authorization of your check, call the toll free number listed below (ask for operator 240):

Toll Free 1-877-596-7758 No: 034-1031P63

TRADE-INS: Your trade-in will be purchased for top \$\$\$ even if you still owe a balance. Please bring your title or payment book with you. IN MANY CASES, YOUR TRADE MAY BE THE ONLY DOWN PAYMENT YOU WILL NEED.

NOTICE: Just for attending this special event, you will receive a \$1000.00 Online Shopping Spree, compliments of Lee Toyota.

IMAGINE...DRIVING A NEW CAR FOR THE SAME PAYMENT...OR LESS THAN YOU'RE PAYING NOW. THIS CAN AND DOES HAPPEN!

| <small>Must be used in conjunction with any other offer. In stock vehicles only. Limit one voucher per vehicle.</small> | | No: 034-1031P63 | | Authorization #: | | | | |
|---|-------|--|--|---|-------|-------|----|-------------------------------|
| Lee Toyota 107 Main Street Topsham, ME 04086 | | DATE March 4th & 5th 20 05 | | ISSUE FROM Accounting | | | | |
| THE AMOUNT OF \$2,010.00 - - TWO THOUSAND TEN DOLLARS & 00/100 | | <table border="1"> <tr> <th>DOLLARS</th> <th>CENTS</th> </tr> <tr> <td>2,010</td> <td>00</td> </tr> </table> | | DOLLARS | CENTS | 2,010 | 00 | VOUCHER NUMBER No: 1432-CA |
| DOLLARS | CENTS | | | | | | | |
| 2,010 | 00 | | | | | | | |
| Pay to the order of: Debra Leclair 353 Main St Yarmouth, ME 04096-7936 | | SIGNATORY  | | DOLLAR CENTS 22 00 00 | | | | |
| 1043 093 137758 | | DATE OF ISSUE 03/05/05 | | Voucher Made-Out In Full To: Debra Leclair | | | | |
| 1043 093 137758 | | NON-NEGOTIABLE VOUCHER, NOT REDEEMABLE FOR CASH. | | EXHIBIT | | | | |

Phone (207) 622-1706
Cell (603) 498-3263Bertera GM Outlet
Palmer, MA**CONTRACT & AGREEMENT TO PROVIDE
DIRECT MAIL PROMOTION**Provide the mail drop
With the following services:Was / Is price tags, priced and hung
Mailing manuscript
Customer Registration forms
Additional receptionist/greeter in addition to team**PHASE ONE**

One member on site, Wednesday for telephone assistance and management of traffic, and sale preparedness 8AM to close.

PHASE TWO

Thursday, Friday, Saturday, and Sunday, Monday as required, full team for sale, comprising desk, supplemental F&I and sales and closing assistance, 9 AM to close.

PHASE THREE

First business day following the event, two member team, cleanup of trades if applicable, funding of finance contracts and loose ends, 9 to 11AM.

Final recap of sale with dealer and GM 11 AM to 12 Noon.

TERMS OF EVENTS

Contract is for three events during the following 12 months from the date of this contract.

\$0.74 per name 25,000 names, minimum drops

20% of front and back gross sold/delivered during phase two (All sales, entire dealership).

Monday cleanup 9AM-12PM, no additional charge

Dealer agrees to indemnify and hold The Wolfington Group harmless from actions arising from the sale of vehicles from Dealer's place of business during the dates of sale.

\$3000.00 per event, non refundable deposit, to be credited toward each of three events due on acceptance of terms to secure dates/times.

Balance of 15500.00, per event deposit required 14 days prior to mail drop.

DATES OF EVENTS~~MARCH 14, 15, 16, 17, 2002~~~~JULY 11, 12, 13, 14, 2002~~Sept 26, 27, 28, 29 2002
~~Oct 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 2002~~

Authorized and binding signature of Dealer

10/29/01
date

Leland Glynn Wolfington Group

10/29/01
date~~2/27, 28, 29 / '03~~~~12/11, 12, 13, 14 / '03~~



99 Western Avenue
Augusta, ME 04330

Tel: (207) 622-1706 • Fax: (207) 622-8990

Bertera Chevrolet, Oldsmobile, Pontiac, Buick
1187 Thorndike Street
Palmer, MA 01069

DIRECT MAIL AND SALE EVENT PROPOSAL

Provide the mail drop

With the following services:

Was / Is price tags, priced and hung
Mailing manuscript
Customer Registration forms
Premium gifts for invited guests
Receptionist/greeter

PHASE ONE

Wednesday

One member of team on site to manage sale preparedness 8 AM to close

PHASE TWO

Thursday

Full team, for training and sale preparedness, comprising desk, supplemental F&I and sales and closing assistance.

9 AM to Close

PHASE THREE

Friday, Saturday and Sunday

Sale dates, full team on site, bell to bell

Monday, two member team, cleanup, funding of finance contracts, insurance and loose ends, 9 AM to 11 AM.
Final recap of sale with dealer and GM 11 AM to 12 Noon

\$0.76 per name for 40,000 names

20% of front and back gross, holdback, and document fees sold/delivered Thursday, Friday, Saturday, and Sunday (All sales, entire dealership).

Monday cleanup 8AM-12PM, no additional charge

Dealer acknowledges that The Wolfington Group system and mail piece is copyrighted and proprietary. This agreement provides a license for one time use of these materials and system per event. Any additional use of these products is an infringement under applicable copyright laws. Dealer agrees to indemnify and hold The Wolfington Group harmless for actions arising from the sale of vehicles in association with this dealership.

\$3,000.00 non-refundable deposit per event due on acceptance of terms to secure dates/times.

Balance of mail cost required two weeks before mail drop. Bertera will receive a \$3,800.00 mail credit per event in addition to their deposit.

Dates of Events


Authorized and binding signature of Dealer 9/29/03
date

8, 9, 10 2000
April 15, 16, 17, 18 2004
Aug. 19, 20, 21, 22 2004
Dec. 2, 3, 4, 5 2004

Harry Wolfington, Wolfington Group

date

Confidential proposal



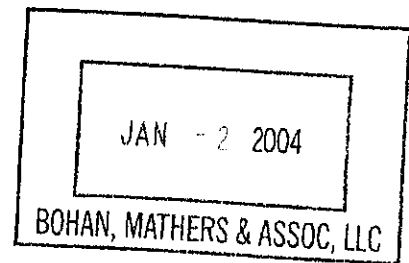
Frank A. Caruso
Lori A. Landers
Mahsa Khanbabai †
David M. Murphy
Brian G. Shea

† Also Admitted in New York



MULBERRY
LAW GROUP

127 Mulberry Street
P.O. Box 30058
Springfield, Massachusetts 01103-0058
Telephone (413) 732-3320
Facsimile (413) 781-8553
www.mulberrylawgroup.com



December 29, 2003

Patricia M. Mathers, Esquire
Bohan, Mathers & Associates
75 Market Street, 5th Floor
P. O. Box 17707
Portland, ME 04112-8707

RE: Copyright Infringement

Dear Ms. Mathers:

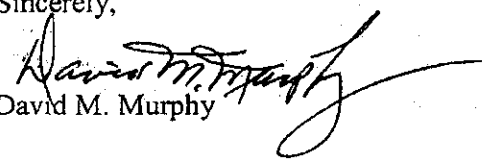
As you are aware, this office represents The Bertera Group in the above referenced matter. Upon receipt of your letter dated November 24, 2003, The Bertera Group immediately ceased all use of the letter described as The Wolfington Group's proprietary mailing piece (the "Letter").

As in many business areas, direct mail is an accepted business practice in the automobile dealership industry. As direct mail is a widely utilized method of reaching customers, The Bertera Group will continue to make use of this common business practice. The Bertera Group was not aware its use of this particular Letter constituted a copyright infringement.

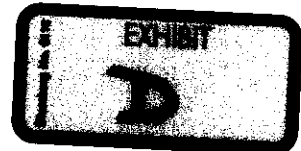
The Bertera Group maintains an ongoing business relationship with The Wolfington Group. In an effort to maintain their good business relationship with Wolfington, Bertera will continue to comply with your client's request to refrain from using the Letter in all future mailings.

We trust this action by the Bertera Group satisfies your client's concerns regarding any use of the Letter.

Sincerely,


David M. Murphy

cc: R. Ghazarian



SCANNED

INVENTORY CLEARANCE EVENT • BY INVITATION ONLY •

Filec
No. 9859855
---ISSUED---
August 11th, 2005

Your verification for eligibility has been completed.

Dear Valued Customer,

Bertera Chevrolet and Chevy Truck outlet is your designated site to sell hundreds of new and used cars, trucks, minivans and sport utility vehicles from DaimlerChrysler Corporation, General Motors, Ford Motor Company and select import manufacturers. Sponsored auction vehicles, dealer demos, rental and lease returns, factory program vehicles, local trade-ins and dealership pre-owned vehicles will also be available. Plus Free extended 100,000 mile warranty on every qualified vehicle.

The chosen site for this event is:

BERTERA CHEVROLET PONTIAC BUICK

1187 THORNDIKE STREET • PALMER, MA 01069

(866) 302-7542 • www.BerteraChevy.com

3 DAYS ONLY!!!

Thursday,
August 18th
9am-8pm

Friday,
August 19th
9am-6pm

Saturday,
August 20th
9am-5pm

To ensure the sale of these vehicles, additional inventory, combined with 0.0% APR FINANCING (on select models) will save you thousands of dollars. Pricing will start as low as \$4,895. No dealers or brokers until Monday, August 22nd.

THIS WILL BE YOUR ONLY NOTICE!

BONUS: The attached check will be the exact amount you will receive on your selected vehicle! NOTE: Checks will range from \$ to \$3,800. For authorization of your check, call the toll free number listed below (ask for sales operator).

TOLL FREE: 1(866) 302-7542

NO. D106-1031TF

PRE-QUALIFIED: You are receiving this offer after reviewing your credit report: It has been determined that you meet the lender's requirement for credit. You are Pre-Qualified for an auto loan of **\$24,892.00**

TRADE-INS: Trade-ins will be accepted, paid for or not! Please bring your title or payment book with you. IN MANY CASES, YOUR TRADE MAY BE THE ONLY DOWN PAYMENT YOU WILL NEED.

NOTICE: All pre-owned vehicles sold during sale will carry a **FREE 100,000 mile warranty**
IMAGINE... Driving a new car for \$50 to \$150 less per month!
THIS CAN AND DOES HAPPEN!!!

100,000 mile warranty to qualified vehicle must be within factory warranty mileage. Cars over 38,000 miles will receive a 3 year/ 38,000 mile warranty. Mileage must not exceed warranty limitation. Bertera Chevy 2005©

YOU CAN CHOOSE TO STOP RECEIVING "PRESCREENED" OFFERS OF CREDIT FROM THIS AND OTHER COMPANIES BY CALLING TOLL-FREE 1-888-567-8688. SEE **PRESCREEN & OPT-OUT NOTICE** ON THE REVERSE SIDE OF THE CHECK FOR MORE INFORMATION ABOUT PRESCREENED OFFERS.

BERTERA CHEVROLET PONTIAC BUICK
1187 Thorndike St
Palmer, MA 01069

Voucher# 003-1031FSS4 Valid on:

August 18th, 19th & 20th, 2005

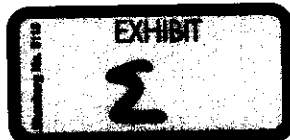
Authorization #:

The Sum
of up to

THREE THOUSAND FOUR HUNDRED AND 00/100 ***

AMOUNT \$3,400.00

***** 5-DIGIT 01056
EILEEN THOMPSON
90 SOUTHWOOD DR
LUDLOW MA 01056-1631



AUTHORIZED SIGNATURE

Valid only when used toward the purchase of any pre-owned vehicle. One coupon per sale. Not valid with any other offers or advertised specials.

ISSUE FROM
ACCOUNTING

ISSUANCE NUMBER
NO: 1182-CR

DOLLAR C
\$3,400 00

Voucher
Confirmation
Number:
003-1031FSS4

DATE OF ISSU
08/11 05

\$3,400 00

Non-Negotiable Vouch

Received Time Aug. 18, 4:15PM

0299-249-814

00183

089121 90 BT 2004

*Amended by CO from phone call to Harry Wolfington on May 13, 2004

EXAMINED BY

CHECKED BY

FORM TX

☐ CORRESPONDENCE

Yes

FOR
COPYRIGHT
OFFICE
USE
ONLY

DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE CONTINUATION SHEET

PREVIOUS REGISTRATION Has registration for this work, or for an earlier version of this work, already been made in the Copyright Office?

☐ Yes ☒ No If your answer is "Yes," why is another registration being sought? (Check appropriate box.)

a. ☐ This is the first published edition of a work previously registered in unpublished form

b. ☐ This is the first application submitted by this author as copyright claimant

c. ☒ This is a changed version of the work, as shown by space 6 on this application

If your answer is "Yes," give Previous Registration Number >

Year of Registration >

DERIVATIVE WORK OR COMPILEATION

Transferring Material Identify any preexisting work or works that this work is based on or incorporates.

PREEXISTING WORK - WOLFINGTON LETTER - THIS IS A SUBSTANTIALLY CHANGED VERSION - PREVIOUS REGISTRATION # TX 5285994

Material Added to This Work Give a brief, general statement of the material that has been added to this work and in which copyright is claimed.

See instructions before completing this space.

SUBSTANTIAL REWORKING OF INVITATION, NEW CHECK DESIGN, NEW PHONES AND TELEPHONE NUMBERS

DEPOSIT ACCOUNT If the registration fee is to be charged to a Deposit Account established in the Copyright Office, give name and number of Account.

CORRESPONDENCE Give name and address to which correspondence about this application should be sent.

HARRY WOLFINGTON
254 WESTERN AVE
AUGUSTA, ME 04330

Area code and daytime telephone number > 207-622-1706

Fax number > 207-623-1198

E-mail > WLFGRP@AOL.COM

CERTIFICATION I, the undersigned, hereby certify that I am the

Check only one >

- ☒ author
☐ other copyright claimant
☐ owner of exclusive right(s)
☐ authorized agent of

of the work identified in this application and that the statements made by me in this application are correct to the best of my knowledge

Name of author or other copyright claimant, or owner of exclusive right(s)

Typed or printed name and date > If this application gives a date of publication in space 2, do not sign and submit it before that date

HARRY WOLFINGTON

Date > 2/29/04

Handwritten signature >

X

Certificates will be mailed in window envelope to this address

Name >

HARRY WOLFINGTON

Number/Street >

254 WESTERN AVE

City/State/Zip >

AUGUSTA, ME 04330

Complete all voluntary spaces. Sign your application in space 8.

Application form > A. Instructions for filling out this form are printed on the back of this form. B. Copyright Office >

Copyright Office > 101 Independence Avenue, S.E. Washington, D.C. 20540-4222

This is not a contract. It is a statement of the facts as they are. It is not a guarantee of any kind. It is a statement of the facts as they are. It is not a guarantee of any kind.

17 U.S.C. § 506(a) Any person who knowingly creates a false representation of a material fact in the application for copyright registration provided for by section 408 or in any written statement filed in connection with the application, shall be fined not more than \$2,000.

Rev. July 2003—enc. Web Form July 2003 © Printed on recycled paper

U.S. Government Printing Office 2000-481 114250/021

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

The Wolfington Group

(b) County of Residence of First Listed Plaintiff Kennebec, ME
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
See attachment.

DEFENDANTS

Bertera Chevrolet, Pontiac, Buick, Inc.

County of Residence of First Listed Defendant Hampden, MA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

| | | | | | |
|--|--|--|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other | BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark | OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | |

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

17 USC § 106

Brief description of cause:

Claim for copyright infringement, violation of MGL ch. 93A, and breach of contract

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Unspecified

CHECK YES only if demanded in complaint:

JURY DEMAND:

☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

September 12, 2005

FOR OFFICE USE ONLY

BBO No. 562811

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

ATTACHMENT TO CIVIL COVER SHEET

Roy T. Pierce, BBO No. 562811
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLP
One City Center
P.O. Box 9546
Portland, ME 04112-9546
(207) 791-3000 (phone)
(207) 791-3111 (fax)
rpierce@preti.com

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) The Wolfington Group v. Bertera Chevrolet, Pontiac, Buick, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- ☐ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☒ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☐ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.

05 - 30202 - MAP

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐ NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐ NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ NO ☐

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐ NO ☒

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES ☒ NO ☐

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division ☐ Central Division ☐ Western Division ☒

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ Central Division ☐ Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐ NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Roy T. Pierce, BBO No. 562811

ADDRESS Preti Flaherty, One City Center, PO Box 9546, Portland, ME 04112-9546

TELEPHONE NO. 207-791-3000